IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

SUIT NO. 1916 OF 1989

Bhagwanti Exports Pvt. Ltd.,
Regd. Office at -
Wankhede Statium, North Stand
L & M Wing, D-Road,
Churchgate, Mumbai - 400 020. ... Plaintiffs

V/s

Punjab National Bank,
Head Office at -
1, Tolstoy Marg, New Delhi - 110 001
Branch Office at Brady House,
12/14, V.N. Road, Fort, Mumbai-400 001. ... Defendants

Mr. C.S. balsara with N.R. Mody and Ms. Falguni Thakkar i/by Rustamji & Ginwala for the plaintiffs.

Mr. S.A. Bhalwal with Ms. Usha Singh i/by Vyas & Bhalwal for the defendants.

CORAM: P.V. KAKADE, J.

DATED: 29TH OCT., 2004.

P.C.:

1. The plaintiffs have filed this suit against the defendants Bank for recovery of the amount of Rs.80,475.62 alongwith interest at the rate of 18% p.a. on the principal amount from the date of the suit till its realization.

2. Plaintiffs is a Private Limited Company who had

their Account No.52017 with the defendant bank which is a nationalized bank having its business at Mumbai. The cheque book bearing Cheque Nos. 205901 to 206000 issued by the defendants to the plaintiffs for day-to-day operations was about to be exhausted. Thus on 6.7.1987, the requisition slip was duly signed by the plaintiffs' Director Mr. N.K. Mehta for the issuance of a fresh cheque book. The requisition slip was carried to the defendants' Fort branch by the plaintiffs' peon Mr. Narayan and was duly presented by the plaintiffs' peon and was duly signed on the reverse by him. Said Narayan was informed by the defendants' officers to come later to collect the fresh cheque book. However, upon his return visit, the defendants informed said Narayan that the requisition slip had been misplaced by the defendants and the plaintiffs should therefore write a letter requesting that a fresh cheque book be issued. The plaintiffs accordingly wrote such a letter on or about 16.7.1987 and forwarded the same to the defendants who issued a cheque book bearing Cheque Nos. 376001 to 376050 to the plaintiffs on 16.7.1987. Plaintiffs have thereafter issued several cheques from the said cheque book.

On 24.7.1987, plaintiffs received a telephone call from

one Mr. Pradeep, defendants' Ledger Keeper informing them that certain cheques of the plaintiffs' were being returned by the defendants for want of funds. When the plaintiffs' Chief Accountant met with the defendants, it was discovered that on 20.7.1987 the defendants had paid in cash from the plaintiffs' above account the sum of Rs.60,000/- favouring one Ravindra Singh pursuant to a bearer Cheque No. 374979 dated 11.7.1987. The said amount was debited by the defendants to the plaintiffs' account on or about 20.7.1987. It is the case of the plaintiffs that they never issued the said cheque and in fact had never been issued any cheque book bearing the said cheque. The signature on the said cheque was also forged and was not the correct signature of the plaintiffs' Director Mr. N.K. Mehta. Thereafter, it was brought to the notice of the defendants by their letter dated 29.7.1987. In order to substantiate their contention, the plaintiffs set out in detail the various cheques they had issued from the cheque book containing cheque Nos. 376001 to 375050 that was issued to them on 16.7.1987. Plaintiffs have stated that the said cheque was a forged document and immediately informed the defendants in this regard. The plaintiffs submitted that they had no dealing with any Ravindra Singh and, therefore, defendants had made a wrong debit entry in

their account and, therefore, the plaintiffs were not liable for the said cheque. Therefore, plaintiffs accordingly requested the defendants to immediately credit their account with Rs.60,000/-.

3. The defendants, in reply to the plaintiffs' letter, denied their liability in respect of the said cheque and stated that they had made payment in respect of the same in due course in good faith and without any negligence. Defendants also denied that the said cheque was forged and further stated that plaintiffs had received the cheque book which contained the said cheque.

On 5.8.1987, the plaintiffs, through their Chief Accountant, filed a written criminal complaint with the Palton Road Police Station in respect of the fraud played upon them pertaining to the said cheque. Inspite of several letters and exchange of correspondence, the defendants refused to accept their liability and hence the suit came to be filed against the defendants for recovery of the said amount on the ground that the defendant Bank was negligent in making payment on the said forged cheque and, therefore, they were liable to make good the loss to the plaintiffs.

4. The defendants filed their written statement and challenged the allegations made by the plaintiffs. It is the case of the defendants that they acted with due diligence and cleared the said cheque bearing No.374979 in the ordinary course of business after tallying the signature on the said cheque with the specimen signature of Mr. N.K. Mehta and accordingly the said cheque was cleared in the ordinary course of their business and, therefore, they are not liable to make good the loss. It was further contended that they had issued two cheque books to the plaintiffs' representative Narayan and that cheque book bearing the said cheque No.374951 was collected by the plaintiffs' representative Narayan. It was further contended that the signature of N.K. Mehta on the impugned cheque is similar to the specimen signature in the custody of the bank and, therefore, it is stated that plaintiffs had received the amount of Rs.60,000/- under the said cheque through their representative and, therefore, the suit was sought to be dismissed with costs.

5. On the basis of these pleadings, issues are settled. The settled issues and my findings thereon are as under :-

(1) Whether the plaintiffs prove that the original defendants had wrongly paid a sum of Rs.60,000/- in cash to Mr. Ravindra Singh pursuant to a forged bearer cheque No.374979 dated 11.7.1987 out of the plaintiffs' account bearing No. 52017 ? **In the affirmative.**

(2) Whether the plaintiffs prove that the purported cheque No. 374979 is a forged document and the signature purporting to be that of plaintiffs' Director Mr. N.K. Mehta on the said cheque, was a fabricated one and not genuine ? **In the affirmative.**

(3) Whether the defendants prove that the original defendants acted with due diligence and cleared the said cheque No. 374979 in ordinary course of business, after tallying the signature on the said cheque with specimen signature of Mr. N.K. Mehta in ordinary course of its business and, therefore, the original defendants acted with reasonable care and precaution ? **In the negative**.

(4) Whether the defendants prove that two cheque

books were issued by the original defendants to the plaintiffs' representative Mr. Narayan and that cheque book bearing the said cheque No. 374951 was collected by the plaintiffs' representative Mr. Narayan ? **In the negative.**

(5) Whether the defendants prove that the signature on the said cheque No. 374979 is similar to the specimen signature of Mr. N.K. Mehta, Director of plaintiffs as alleged in para 4 of the written statement ? **In the negative.**

(6) Whether the defendants prove that the said cheque No.374979 was encashed by the representative of the plaintiffs as alleged in para 15 of the written statement ?

In the negative.

(7) Are plaintiffs entitled to a decree against defendants in the sum of Rs.80,475.62 with a further interest on the principal sum of Rs.60,000/- at the rate of 18% p.a. and costs ?

In the affirmative.

(8) What order ? **As per final order.**

6. At the outset, it may be noted that both the parties have led evidence, oral as well as documentary, in support of their respective contentions.

PW-1 Mr. Mahaddalkar, the Chief Accountant of the plaintiffs, has deposed on behalf of the plaintiffs, who claims to have knowledge of the entire suit transaction as he was working as the Chief Accountant of the plaintiffs during the period from 1987 to 1992 and was looking after the accounts. He has filed his affidavit of evidence and has proved the documents on record vide Exhs. P-3 to P-22.

On the other hand, one Mr. Jayanand Shetty is examined on behalf of the defendants who is working as Manager (Loans) of the defendant bank in Fort Branch, Mumbai. Admittedly, he does not have any personal knowledge regarding the transaction and has categorically stated in his cross-examination that one Ms. Dhan Kapadia was the main officer who handled the suit account at the relevant time. Defendants have also produced the documents at Exhs. D-3 to D-14 including the specimen signature of Mr. N.K. Mehta as well as the forged cheque from their custody.

7. It can be culled out from the oral evidence of the plaintiffs that Mr. Narayan was working as a Peon in their office since the year 1985 and he left the service in 1990. Requisition slip dated 9.7.1997 is produced by the defendants on record. The witness categorically states that the signature behind the said requisition slip Exh.D-3 is not that of Narayan and he has also stated that he did not receive any cheque book at the foot of the said requisition slip. On the other hand, the plaintiffs were informed by the defendants that the requisition slip was misplaced and, therefore, the letter was called for from the plaintiffs for issuance of fresh cheque book. The said letter is on record and, therefore, plaintiffs' statement to that effect has to be accepted as proved. It is also pertinent to note that, it has come in the evidence that Mr. Narayan has not signed the bank register as an acknowledgement or receipt of the said cheque book which also has to be accepted because the Bank has not come forward with its register showing signature of Mr. Narayan. The signature appearing against the entry is categorically said to be not of Mr. Narayan. The plaintiffs' witness has stated that he know the signature of Mr. Narayan because he used to sign his salary register and, therefore, there cannot be any doubt that he knows the signature of Mr. Narayan and also

testifies to the effect that the requisition slip is not having the signature of Mr. Narayan. Defendants' compilation page No.27 for entry dated 9.7.1987 shows that a person has signed receiving the cheque book containing cheque from Nos.374951 to 375000. However, the witness categorically states that, it is also not the signature of Mr. Narayan who has apparently received the cheque book from which the impugned cheque has come. However, the fact remains that the signature behind the requisition slip and signature at page 27 of defendants' compilation are quite different and obviously not made by one person only. The fact remains that none of the signature appears to be that of Mr. Narayan and, therefore, it cannot be said that Mr. Narayan collected the said cheque book at any time.

8. Similar is the case with regard to the signature of Mr. N.K. Mehta, the Director of the plaintiffs. Mr. Mehta's specimen signature is with Exh.D-4 produced on record on behalf of the defendants and the impugned cheque is at Exh.D-6. The plain comparison of both the signatures are sufficient to show that the signature appearing on the impugned cheque is not that of Mr. N.K. Mehta. It was urged on behalf of the defendants that a speedy rhythm appearing in both the signatures is the

same, however, I prefer to disagree with that. In fact the signature on impugned cheque appearing to be made with certain deliberations especially pertaining to letters "K" and "M" and also regarding letters "ta". Therefore, there is no doubt whatsoever that the signature appearing on the cheque book is not that of Mr. N.K. Mehta and somebody has forged that signature in order to extract money from the said bank account fraudulently. No doubt that the evidence of handwriting expert is not made available on record though it is seen that the plaintiffs had obtained opinion of handwriting expert. However, in absence of evidence of the concerned handwriting expert before the Court in order to prove the opinion, it cannot be taken into account but the fact remains that mere educated comparison of both the documents i.e. specimen signature and signature on the impugned cheque, makes it clear that the signature appearing on the impugned cheque is not that of Mr. N.K. Mehta and does not tally with his specimen signature.

9. As against this evidence of the plaintiffs, the defendants' oral evidence is of no avail especially when evidence of witness Ms. Dhan Kapadia is not made available for cross-examination. According to the defendants' witness, she was the only person who used to

handle the suit account. This aspect alongwith other admission given on behalf of the defendants leave no doubt whatsoever that the plaintiffs' case appears to be genuine. Therefore, I am inclined to hold that the defendants had wrongly paid the sum of Rs.60,000/- in cash to one Mr. Ravindra Singh pursuant to a forged bearer cheque No. 374979 dated 11.7.1987 out of plaintiffs' account No. 52017. Similarly, the evidence on record is sufficient to establish that the impugned cheque is the forged document and signature purported to be that of Mr. N.K. Mehta was fabricated and not genuine. On the other hand, defendants did not prove that two cheque books were issued to the plaintiffs' representative Mr. Narayan and impugned cheque was also collected by said Mr. Narayan for want of conclusive proof relating to Mr. Narayan's signature especially when plaintiffs' witness has disproved this aspect.

10. The question remains to be decided as to whether the defendant bank was negligent in processing and making payment on the basis of forged cheque. The answer would be definitely in the affirmative. In the case of **Canara Bank v/s Canara Sales Corporation & ors., reported in A.I.R. 1987 SC 1603,** it is observed by the Apex Court that, whenever a cheque purporting to be by a customer is

presented before a bank, it carries a mandate to the bank to pay. If a cheque is forged, there is no such mandate. The bank can escape liability only if it can establish knowledge to the customer of the forgery in the cheques. Inaction for continuously long period cannot by itself afford a satisfactory ground for the bank to escape the liability. Unless the bank is able to satisfy the Court of either an express condition in the contract with its customer or an unequivocal ratification, it will not be possible to save the bank from its liability. The bank do business for their benefit. Customers also get some benefit. If banks are to insist upon extreme care by the customers in minutely looking into the pass book and the statements sent by them, no bank perhaps can do profitable business. The bank’s business depends upon the trust of the customer. In the present case before us, it was the duty cast upon the bank to take utmost care to ensure that the cheque was genuine and payment was made on that basis after due diligence. Here the matter appears to be quite opposite. The defendants, as can be seen from their adamant conduct, were trying to evade from liability and duty towards customers by denying all the contents and ascertaining that it was the plaintiff who received the payment under the cheque, which is not the case.

In view of this position, I have no doubt whatsoever that the defendants have failed to establish their case that the conduct of their officers in this transaction was in good faith and with due diligence and, as such, I am of the view that defendants cannot escape liability to make good the loss to the plaintiffs.

11. Hence, the following order is passed :-

O R D E R

1. The suit is hereby decreed with costs.

2. The defendants shall pay Rs.80,475.62 ps. to the plaintiffs alongwith interest at the rate of 12% p.a. on Rs.60,000/- from the date of the suit till payment or realization.

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